

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE VALVE ANTITRUST LITIGATION

No. 2:21-cv-00563-JCC

**STIPULATED SUPPLEMENTAL
PROTECTIVE ORDER**

**NOTE ON MOTION CALENDAR:
NOVEMBER 14, 2023**

WHEREAS, the protections set forth in the Stipulated Protective Order (“Protective Order”) in the above-captioned case (“Litigation”), *see* Dkt. No. 95, apply and are available to non-parties as well as parties; and

WHEREAS, prior to the disclosure in this matter of their confidential information, non-parties Microsoft Corporation (“Microsoft”) and ZeniMax Media Inc. (“ZeniMax”) seek protections in addition to those set forth in the Protective Order;

WHEREFORE, IT IS HEREBY ORDERED that “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” documents or information disclosed or produced by non-parties Microsoft or ZeniMax, or disclosed or produced by parties to the extent such documents or information contain “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” material of non-parties Microsoft or ZeniMax, shall be subject to the following provisions:

1 1.1 The definitions, terms and provisions contained in the Protective Order shall
2 be incorporated herein by reference as though fully set forth herein; provided, however, that in the
3 event of a conflict between any definition, term, or provision of this Supplemental Protective Order
4 and any definition, term, or provision of the Protective Order, this Supplemental Protective Order
5 shall control with respect to such conflict.

6 1.2 For purposes of production or use of information or items designated
7 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by non-parties Microsoft or
8 ZeniMax, the term “Expert” shall mean a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who: (1) has been retained by a party or its counsel to serve as an
10 expert witness or as a consultant in this action; (2) is not a past or current employee of a party, a
11 party’s competitor, or a competitor of the designating non-party; (3) at the time of retention, is not
12 anticipated to become an employee of a party, a party’s competitor, or a competitor of the
13 designating non-party; and (4) has signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A).

15 1.3 Unless otherwise ordered by the Court or permitted in writing by the party
16 or non-party designating such material, all information or items designated as “HIGHLY
17 CONFIDENTIAL – ATTORNEY’S EYES ONLY” by non-parties Microsoft or ZeniMax shall
18 not be disclosed to any person except: (1) Experts (as defined in this Order) to whom disclosure is
19 reasonably necessary for this litigation; and (2) those listed in subparagraphs (a), (d), (e), (g) and
20 (h) of paragraph 4.2 of the Protective Order.

21 1.4 Notwithstanding the foregoing paragraph, information or items designated
22 as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by non-parties Microsoft or
23 ZeniMax may also be disclosed to a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a party or its counsel to serve as an expert
25 witness or as a consultant in this action and who is a past or current employee of a competitor of a
26 party, a party’s competitor, or a competitor of the designating non-party or anticipated to become

1 one, provided that before such disclosure, the person shall be identified to the designating non-
2 party (the “Notice”) along with the name of the company in which the person has been or currently
3 is an employee or anticipates becoming an employee, and shall also sign the “Acknowledgment
4 and Agreement to Be Bound” (Exhibit A).

5 (a) A party that provides the Notice to the designating non-party pursuant to Paragraph
6 1.4 may disclose the subject of the protected material to the identified expert or consultant unless,
7 within seven (7) calendar days of delivering the Notice, the party receives a written objection from
8 the designating non-party. Any such objection must set forth in detail the grounds on which it is
9 based.

10 (b) A party that receives a timely written objection must meet and confer with the
11 designating non-party to try to resolve the matter by agreement within seven (7) calendar days of
12 the written objection. If no agreement is reached, the party seeking to prevent the disclosure to the
13 expert or consultant may, if necessary, file a motion in accordance with the Local Civil Rules to
14 prevent disclosure. Any such motion must describe the circumstances with specificity, set forth in
15 detail the reasons why the disclosure to the expert or consultant should be prohibited, assess the
16 risk of harm that the disclosure would entail, and suggest any additional means that could be used
17 to reduce that risk. The burden to demonstrate why disclosure should be prohibited shall rest with
18 the designating non-party.

19 2. Unless otherwise ordered by the Court or expressly permitted by the designating
20 non-party, no party may file with the Court, or introduce any information or item of non-parties
21 Microsoft or ZeniMax that has been designated “HIGHLY CONFIDENTIAL – ATTORNEY’S
22 EYES ONLY” at trial in a manner that will result in disclosure to persons other than: (1) Experts
23 (as defined in this Order); (2) persons described in paragraph 1.4 above; and (3) those listed in
24 subparagraphs (a), (d), (e), (g) and (h) of paragraph 4.2 of the Protective Order. In the event a
25 Party seeks to file with the Court, or introduce any information or item of Non-Parties Microsoft
26 or ZemiMax designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at trial in

a manner that will result in disclosure to persons other than (1) Experts (as defined in this Order), (2) persons described in paragraph 1.4 above, and (3) those listed in subparagraphs (a), (d), (e), (g) and (h) of paragraph 4.2 of the Protective Order, the Party shall promptly notify in writing the designating non-party so that the provisions of paragraphs 4.4 and 5.2(b) of the Protective Order may be carried out. The Parties recognize that the purpose of this provision is to provide a reasonable opportunity to object to the disclosure of information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at trial to persons other than Experts (as defined in this Order) and those specified in Paragraph 4.3 of the Protective Order (Dkt. 95), and agree to provide the notice described in this paragraph with reasonable notice such that the non-party may raise any objection.

3. Any time a non-party produced document is disclosed in a deposition, whether marked as an exhibit or not, the non-party will be notified and then will have the 40 days in 5.2(b) of the original order to designate that portion of the transcript as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

4. For avoidance of doubt, the rights and obligations in paragraph 4.4 of the Protective Order apply equally to the filing of non-parties Microsoft’s and ZeniMax’s designated confidential material or information and items designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 14th day of November, 2023.

s/ David Golden

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

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8 DATED this 15th day of November 2023.

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12 John C. Coughenour
13 UNITED STATES DISTRICT JUDGE
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